IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT PETITION NOs :21101, 21134 & 21364 of 2005

Dated:10th April 2007.

WRIT PETITION NO: 21101 of 2005

Between:

K.Rama Devi, D/o K.Aga Reddy, Aged 34 years, R/o Plot No.27, Street No.11, HMT Nagar, Nacharam, Hyderabad.

..... PETITIONER

AND

Government of A.P., General Administration Department (Services), Secretariat, Hyderabad, rep., by its Principal Secretary and another.

.....RESPONDENTS

WRIT PETITION NO: 21134 of 2005

Between:

A.K.Swamy, S/o A. Naraya, Aged 42 years, R/o.206, Dwaraka Apartments, Dwaraka Nagar, Kadapa and another.

..... PETITIONERS

AND

Andhra Pradesh Public Service Commission, Nampally,

Hyderabad, rep., by its Secretary and others.

.....RESPONDENTS

WRIT PETITION NO: 21101 of 2005

Between:

Anchala Siva Prasad S/o A. Nagaiah, Aged 34 years, R/o D/o.No.10/92, Nabhi Kota, R.V. Nagar, Cuddapah.

..... PETITIONER

AND

Andhra Pradesh Public Service Commission, Nampally, Hyderabad, rep., by its Secretary and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

WRIT PETITION NOs :21101, 21134 & 21364 of 2005

ORAL COMMON ORDER:
(per the Hon'ble Sri Justice J.Chelameswar)

These three writ petitions are filed aggrieved by a common order of the Andhra Pradesh Administrative Tribunal in a batch of O.As., dated 08-07-2005.

The petitioners herein filed various O.As., before the Tribunal. The factual background is as follows:

The 2nd respondent issued an advertisement (Advertisement No.5/1998) inviting applications from the eligible candidates for filling up 19 categories of posts in various

departments of the State of Andhra Pradesh. The details of the posts as per the said advertisement are as follows:

Post Code (1)	Name of the Post (2)	No. of Vacancies (3)	Minimum/ Maximum age as on 1.7.98 (4)	Scale of pay (5)
1.	Dy. Collectors in the Civil Service (Executive Branch)		18-32	Rs.3880-8140
2.	Deputy Superintendent of Police Category-2 in Police Service	(G) 19	21-26	Rs.3880-8140
3.	Commercial Tax Officers in Commercial Tax Service	(G) 7	18-34	Rs.3880-8140
4.	Regional Transport Officers in Transport Service	-	18-34	Rs.3640-7580
5.	Dy. Registrars of Coop. Societies in Cooperative Service	-	18-32	Rs.3640-7580
6.	Dist. Panchayat Officers in Panchayat Service	-	18-32	Rs.3640-7580
7.	Dist. Registrars in Registration Service	-	18-34	Rs.3640-7580
8.	Divisional Fire Officer in Fire Service	-	21-26	Rs.3640-7580
9.	Deputy Superintendent of jails (Men) in Jail Service	-	18-28	Rs.3640-7580
10.	Asst. Commissioner of Labour in Labour Service	-	18-34	Rs.3640-7580
11.	Asst. Excise Superintendent in Excise Service	-	18-26	Rs.3310-6840
12.	Municipal Commissioner Gr.II in Municipal Administration Service	-	18-34	Rs.3310-6840
13.	District Social Welfare Officers in Social Welfare Service	-	18-32	Rs.3310-6840
14.	District BC Welfare Officers in Tribal Welfare Service	(G)5	18-34	Rs.3310-6840
15.	District Tribal Welfare Officers in Tribal Welfare Service	(L)4	18-32	Rs.3310-6840
16.	District Employment Officers in Employment Service	(G)16	18-34	Rs.3110-6380
17.	Lay Secretary & Treasurer Grade II in Medical & Health Service	(G)-	18-32	Rs.3110-6380
18.	Asst. Treasury Officer/Asst. Accounts Officer in Treasuries & Accounts Service	(L)1	18-30	Rs.3110-6380
19.	Asst. Audit Officer in Local Fund Audit Service	(G)4	18-34	Rs.3110-6380

It can be seen from the above extracted table that with reference to some of the posts, the number of vacancies were clearly mentioned and with reference to other posts, the number of vacancies is not specified, but a note is appended to the table and insofar as it is relevant for the present context, the same is as follows:

> **"Note**: 1.a) The vacancies available are indicated. The number of vacancies is liable to alternation. In respect of other categories, the vacancy position is awaited. The options of the candidates for various posts will be obtained from the eligible and qualified candidates duly informing them of the final and detailed vacancy position at an appropriate time during the process of recruitment.
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> 1.b) The recruitment is meant for the vacancies earmarked for Limited Recruitment and to the regular vacancies arising from 02-05-1996 to 31-08-1998 only under General

Recruitment."

All the petitioners in these three writ petitions approached the Tribunal in corresponding O.As. (O.A.No.2415 of 2004 – W.P.No.21101 of 2005; O.A.No.4259 of 2003 – W.P.No.21134 of 2005 and O.A.No.5263 of 2003 – W.P.No.21364 of 2005) belatedly complaining that the respondents have not filled up all the available vacancies in various notified categories. Their case is that though with reference to some of the departments, the number of vacancies were not specified in the advertisement, it is clear from the notification, particularly from the note extracted above, that the vacancies arising in those categories of posts between the dates specified in the note, would also be filled up, by choosing the successful candidates in the selection process conducted by the

2nd respondent and contrary to such notification, some of the posts were not filled up. It appears from the order under challenge that it is the case of the petitioners that by the inaction of the respondents in not filling up some of the posts, referred to earlier, is because of the fact that the 1st respondent is filling up those posts with promotees contrary to the statutory requirement of filling up certain percentage of those posts by way of direct recruitment thereby violating the mandate of the law.

The respondents contested the matters before the Tribunal. The Tribunal dismissed all the O.As. against which the present writ petitions are filed, principally, on the ground that the applicants approached the Tribunal belatedly, as according to the Tribunal, the selection stood finalized by the year 1998 itself. The Tribunal also recorded a finding in the following lines:

> " It is a settled preposition of law that this Tribunal cannot issue directions compelling the Government to fill up the vacancies."

The learned senior counsel for the petitioners Sri P.Gangaiah Naidu argued that with reference to the category of posts of Deputy Superintendent of Police covered by the same notification, the State initially notified 19 vacancies, but when the results came to be published, the State chose to publish the result of only 10 candidates as successful. Aggrieved by the same, some of the applicants, who applied to the post of Deputy Superintendent of Police, approached the Tribunal in O.A.No.6643 of 2003. On a consideration of the material before the Tribunal, the said O.A., was allowed directing the State to fill up all the 19 posts of Deputy Superintendent of Police as originally advertised. Aggrieved by the same, the State of Andhra Pradesh approached this Court by way of W.P.No.6729 of 2005, which was dismissed by this Court by an order dated 28-07-2005, confirming the direction of the Tribunal dated 15-10-2004. The State of Andhra Pradesh carried the matter to the Supreme Court in Appeal (civil) 4129 of 2006. The Supreme Court dismissed the appeal with costs. Therefore, the learned senior counsel submits that with reference to the remaining posts covered by the same notification also, the Tribunal ought to have issued a similar direction compelling the State to fill up the posts.

The distinction between the decision with respect to the category of Deputy Superintendents of Police and the other categories is that; in case of the earlier, the notification specified that 19 posts would be filled up by the selection process, but later the 1st respondent took a decision to fill up 10 posts only out of the 19 posts, whereas there are number of categories of posts and the actual number of posts in each of the categories, was not known at the time of the notification. Though the notification stated that with reference to those vacancies that arose between

the dates specified in the notification, would be filled up, the exact number of vacancies that arose during that period is not available on record. It is a lamentable state of affairs, no doubt, resulting from utter chaos occurring in the administration of the State. In the affidavit dated 02-04-2007 filed before this Court by the Principal Secretary to the Government of Andhra Pradesh, Finance Department, at Paragraph No.5 it is stated as follows:

> " 5. It is submitted that claim of the Petitioners that there are still some more vacancies to be filled up is not correct in respect of Notification No.5/1998 of Group-I Services and no proposals received from the Heads of Departments / Administrative Departments in respect of Notification No.5/1998 of Group-I Services are pending in the Finance Department."

From the said statement the only inference that can be drawn is that the Government has no information as to the number of vacancies that arose in the departments concerned for the said period, on account of the fact that the concerned heads of the departments did not send any information to the Finance Department. The deponent of the affidavit does not make any emphatic statement that no vacancy arose. It is a mystery as to how an advertisement came to be issued proposing to fill up uncertain vacancies of various categories and this Court to be told that there are no posts to be filled up.

Be that as it may, the petitioners, in our view, cannot invoke the decision of the Tribunal rendered in O.A.No.6643 of 2003, for the reason that in that case the number of vacancies of the posts of Deputy Superintendent of Police was specific in the advertisement and by some mistake the State subsequently chose to fill up 10 vacancies only out of 19 advertised vacancies, but later realized its mistake and retraced its steps. The Supreme Court in this regard held as follows:

> " …… Mistakenly, the State directed to fill up only ten posts which was realized by it when the Original Application was filed before the Tribunal. It accepted its mistake in no uncertain terms."

Therefore, the Tribunal, in our view, more or less, passed an order on consent directing the State to fill up all the 19 posts of Deputy Superintendent of Police. Strangely, it was the A.P. Public Service Commission-2nd respondent, which felt aggrieved by the said direction of the Tribunal and approached this Court with the only submission that after a lapse seven years it would be difficult for it to implement the direction of the Tribunal. This Court rejected the same and held as follows:

> " The only submission made by the learned counsel for the writ petitioner is that at this stage, after a lapse of 7 years, if the direction of the Tribunal is to be implemented it would involve a great deal of exercise on the part of the Service Commission as the examination was conducted not only for the posts of Deputy Superintendent of Police but to 18 other categories of posts belonging to the same group. This argument, in our considered opinion, is only to be stated as rejected, as there is a constitutional obligation of the Service Commission to conduct the examinations to enable the State to fill up the various posts to be filled up by the State. Such an obligation necessarily involves a onerous exercise, but that cannot be an execuse to decline the discharge of an obligation mandated by the Constitution of India."

The same was unsuccessfully questioned before the Supreme Court. Dismissing the appeal of the A.P. Public Service Commission, the Supreme Court held as follows:

> " …. Thus, although a mistake had been committed by the State, the same cannot be

> directed to be perpetrated only because the Commission will have to undertake the selection process again and particularly, in view of the fact that the State of Andhra Pradesh did not question the order passed by the tribunal."

In the instant case, with reference to the various categories of posts, where the number was not certain on the date of notification, the decision of this Court finally merging in the decision of the Supreme Court, referred to above, cannot be, in our view, treated as a precedent for compelling the respondents to fill up uncertain number of posts of various categories, after a lapse of almost a decade. It is not only the lapse of time that compels us to reject these writ petitions but also the fact that subsequent to the notification in question, one more recruitment took place for various categories of posts including those covered by the notification in question. Compelling the State now to work out the vacancies that arose in the interregnum specified in the notification almost a decade back and directing the State to fill up those vacancies with the successful candidates, who participated in the selection process in response to the said notification, would have disastrous consequence in the services of those various categories, which are already in the state of chaos.

In the circumstances, we see no merit in these three writ petitions and accordingly they are dismissed.

J.Chelameswar, J

P.Swaroop Reddy, J

mrk

10th April 2007